THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.7295 and 7296 of 2007

Dated: 10.04.2007

Between:
Gonugunta Venkata Subbarao and others.

..... PETITIONERS

AND

The Commissioner of Endowments, Hyderabad, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION Nos.7295 and 7296 of 2007

COMMON ORDER:

Land admeasuring Acs.2.50 in survey No.575 and Acs.2.18 in survey No.786/8 situated at Kottampalli Village and Mandal, Prakasam District, is owned by Sri Rajagopala Swamy vari Devasthanam, Kothapatnam, third respondent. On a request made by the Managing Trustee of the said temple, first respondent accorded sanction under Section 80(1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (the Act, for brevity) to sell the land in tender-cum-public auction. The public auction was conducted by the Managing Trustee in the presence of the Assistant Commissioner of Endowments on 16.12.1998. The petitioners in W.P.No.7295 of 2007 became highest bidders for a sum of Rs.30,000/- in respect of the land in survey No.786/8. The petitioner in W.P.No.7296 of 2007 became highest bidder for a sum of Rs.22,500/- per acre in respect of the land comprised in survey No.577. As required under Section 80(1)(c) of the Act, auction proceedings were submitted to the Commissioner of Endowments for confirmation.

The petitioners approached the Assistant Commissioner, Ongole, who allegedly sent a report on 30.01.1999. When no orders were passed by the Commissioner, the petitioners submitted separate representations on 05.08.2000 and 08.08.2000 requesting to confirm the auction conducted by the Managing Trustee of the temple. The petitioners allege that after receiving said representations, the Commissioner directed the Assistant Director to resubmit the proposals as the earlier proposals were not traceable in the office of the Commissioner. Accordingly another report was submitted and after consideration of the same, the Commissioner passed orders on 09.06.2006 rejecting the sale proposals. The Commissioner also directed the Managing Trustee of temple to put the lands in public auction afresh duly refunding the amounts to the highest bidders. The proceedings of the Commissioner are challenged in these writ petitions.

The learned counsel for the petitioners submits that as per the conditions of the auction, the petitioners immediately deposited substantial amounts towards 1/3rd of the bid amount and the Commissioner rejected the proposals for confirmation without applying mind. Though there was no delay on the part of the petitioners, the Commissioner proceeded as if the subject temple would be deprived of the bid amount and that the bid amount quoted is not in the interests of

the institution. The learned counsel, therefore, would urge that the impugned order suffers from improper exercise of jurisdiction vested in the Commissioner. These contentions are refunded by the learned Assistant Government Pleader.

The short point for consideration is whether the exercise of powers by the Commissioner of Endowments is in accordance with Section 80 of the Act read with Rule 14 of the Andhra Pradesh Charitable and Hindu Religious Institutions Alienation of Immovable Property Rules, 1987 (the Rules, for brevity).

All properties belonging to a temple or religious institution or endowment shall vest in charitable or religious institution and endowments as the case may be. Section 14 lays down that all properties belonging to charitable or religious institutions vest in such institution. The Board of Trustees appointed under Section 15 of the Act, by reason of Section 23 is empowered to manage and administer the properties belonging to the institution. Chapter 10 of the Act deals with alienation of any immovable property belonging to a religious institution. Section 80 thereof deals with alienation of immovable property by way of gift, sale, exchange or mortgage. Clauses (a) (b) and (c) of sub-section (1) of Section 80 of the Act contain procedure for alienation of property by way of public auction. Every institution has to obtain prior sanction of the Commissioner for alienation of the property and Commissioner has to accord such sanction after inviting objections and suggestions for sale of a property and then the sale affected by tender-cum-public auction in the prescribed manner to be confirmed by the Commissioner. First proviso to sub-section (1) of Section 80 of the Act empowers the Government to permit the sale of immovable property otherwise than by public auction in the interest of institution or endowment and the reasons there for have to be recorded in writing. The phrase “Interest of the Institution or Endowment” cannot be given precise meaning only in terms of monetary considerations. The same will vary depending on the facts and circumstances of each case. Be that as it is, the power conferred on the Government by first proviso to sub-section (1) of Section 80 of the Act is by way of an exception. Second proviso to sub-section (1) of Section 80 of the Act contains another exception. The same is to the effect that the Government may purchase the lands situated in scheduled areas belonging to religious institutions or endowments wherever necessary by private negotiations and assign such lands to the members of the Scheduled Tribes.

Section 80 of the Act contains the method, manner and procedure for alienation of immovable property of a religious institution. As noticed hereinabove, the proposal to transfer/alienate the land by way of gift, sale, exchange, mortgage etc., has to be approved by the Commissioner, who is under an obligation to invite objections by

publishing the proposal in A.P.Gazette. What are the guidelines in exercise of power by the Commissioner? Section 80(1)(b) of the Act indicates that when

i) transaction is prudent and necessary or beneficial to the institution or endowment;

ii) when the immovable property of the institution is uneconomical to own and maintain; and

iii) the consideration for the alienation is adequate and proper.

These factors would guide the Commissioner not only at the preliminary stage of inviting objections but also at the stage of confirmation of sale by the Commissioner under Section 80(1)(c) of the Act. The scope of Section 80(1) of the Act has been subject matter of various Judgments of this Court. A brief reference to **C.Rami Reddy v Government of A.P.,**[1] **Y.Nageswara Rao v Government of A.P.,**[2] and **S.Yadaiah v Commissioner of Endowments**[3] would, however, be suffice.

In **Y.Nageswara Rao** (supra), this Court was concerned with the validity of a Government Order according permission to executive authority of Sri Seetharamaswamy Temple, Patamata, in Vijayawada for sale of Acs.0-49 cents of temple land by private negotiations in favour of respondents therein. One Krishnaiah was permitted to put up a hut on the land to keep a watch on the land. After his demise, respondents therein put up structures unauthorisedly over an extent of Acs.0-15 cents. They made representations to the Government requesting for sale of the land by private negotiations. The Government rejected the request. The same was challenged in W.P.No.9004 of 1982. This court allowed the writ petition on the ground that the rejection order did not contain any reasons. Later, on a review being filed by one Y.Nageswara Rao, the writ petition was dismissed following the decision of the Supreme Court in **C.Ramireddy** (supra). In the writ being W.A.No.252 of 1988, Division Bench allowed the plea and gave a direction to the Government to consider the feasibility of permitting private sale. Thereafter, applicants again approached Government for grant of permission for sale of Acs.0-49 cents by private negotiations at the market value. Government then permitted private sale. After verifying the relevant records produced before it, this Court came to the conclusion that the Government passed orders on the premise that it is compelled to do so as per the judgment of the Division Bench in Writ Appeal No.252 of 1988. The Court then relied on **C.Ramireddy** (supra) and held that the judgment of the Division Bench is *per incurium* being contrary to the ratio laid down by the Supreme Court. Accordingly, the court allowed the writ petition invalidating the Government Order permitting private sale by negotiations.

In **S.Yadaiah** (supra), a Division Bench of this Court, to which I was a member, considered proviso to Section 80(1) of the Act. In the said case, the petitioner and others who were in occupation of land belonging to Sri Navagraha Temple, Hyderabad. On a request made by the temple authorities, the Commissioner Endowments invited objections and issued notification under Clause B of sub-section (1) of Section 80 of the Act. The same was impugned in the writ petition. Contending that the petitioners offered to purchase the land at Rs.2,100/- per sq.yard and without considering their request, the land cannot be put to auction. This court placed reliance on the decision of the Supreme Court in **C.Ramireddy** (supra) as well as another decision of this court in **Vangala Narasimha Charyulu v State of A.P.**[4] and dismissed the writ appeal giving liberty to the appellants participated in the auction.

A reference may also be made to a decision of this Court in **Chinta Ramaiah v Government of A.P.,**[5], wherein it is held as under.

> Under Section 80(1)(c), every sale sanctioned by the Commissioner under clause (b) shall be effected by a tender-cum-public auction in the prescribed manner. The delegated legislation has prescribed the Rules vide G.O.Ms.No.644, dated 30.06.1989 dealing with the sale of immovable property of a religious institution. Besides laying down the procedure to conduct public auction, in Rule 14 of the Alienation of Immovable Property Rules, 1987, it is laid down that the Commissioner, within three months from the date of the sale, shall either confirm or refuse to confirm the sale. When, at the second stage of the confirmation, the Commissioner considers the matter, he is required to keep in mind the same principles as contained in Section 80(1)(b). Merely because tender-cum-auction sale of temple property was sanctioned earlier, it does not mean that the Commissioner should automatically confirm the sale by accepting the highest bid.

A perusal of the impugned order dated 09.06.2006 would show that the Commissioner refused confirmation of auction on the ground that any such confirmation after lapse of seven years from the date of auction would not be in the interests of the institution. This is certainly one of the relevant considerations under Section 80(1)(b) of the Act. Any sale of the property belonging to the religious institution can only be confirmed if the consideration is adequate and proper. When the Commissioner comes to a conclusion that such confirmation is not in the interests of the institution, it can always be presumed that the auction price as on the date of confirmation was not adequate. Secondly when the matter was pending before the Commissioner, the petitioners in W.P.No.7295 of 2007 filed two separate writ petitions, being

W.P.Nos.24452 and 24462 of 2005, respectively, seeking a direction to first respondent to confirm the auction. These were disposed of on 16.11.2005 observing that the Commissioner should consider and dispose of the representations made by the petitioners. Therefore, the petitioners feign cannot ignorance that they are not responsible for the delay on the part of the Commissioner in passing the orders. Therefore, reliance placed on Rule 14 of the Rules is of no avail to the petitioners.

The writ petitions are devoid of merits and the same are accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

10th April, 2007
ghn

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[1] AIR 1986 SC 1159

[2] 1989 (2) ALT 612

[3] 2002 (1) ALT 127 (DB)

[4] 1995(1) ALT 371=1995(1) ALD 467

[5] 2003(3) ALT 59